

Ky. OAG 78-408, 1978 WL 26449 (Ky.A.G.)

Office
of the Attorney General
Commonwealth of Kentucky

OAG 78-408

June 12, 1978

Sgt. Gary M. Godby
Polygraph Unit
Kentucky State Police
State Office Building
Frankfort, Kentucky 40601

Dear Sgt. Godby:

This is in reply to your request for guidance as to whether you may seek the revocation of the license of Mr. Robert Jackson Snyder, a polygraph examiner. The authority to license Detection of Deception Examiners is granted by statute to the Secretary of the Department of Justice, who has delegated such administrative responsibility to the Kentucky State Police Polygraph Unit. [KRS 329.070](#) lists numerous criteria whereby a license may be denied, suspended, or revoked; [KRS 329.070\(3\)](#) specifically states that a license may be revoked or suspended when the licensee has been "adjudicated guilty of a commission of a felony or misdemeanor involving moral turpitude."

A federal Information (No. 77-63) was returned against Mr. Snyder on two counts of failure to file federal income tax returns, pursuant to [26 USC § 7203](#). You indicate that the licensee was convicted in the United States District Court, Eastern District, at Lexington, Kentucky on March 28, 1978 and was sentenced to serve consecutive one year terms. You further point out that Mr. Snyder has appealed this conviction to the United States Court of Appeals for the Sixth Circuit. Having submitted this factual background, you ask:

1. Should any action to revoke Mr. Snyder's license be withheld until the conclusion of the appellate process?
2. Would a conviction for income tax evasion be classified as a felony or misdemeanor involving moral turpitude?
3. What is the definition of moral turpitude and what types of offenses are included within this category?

We first point out that a conviction does not become final until the appeal process is ended. One convicted of a felony, whether it be in a Kentucky court, a sister state, or a federal court is not guilty of the crime so charged until the judicial appellate process terminates and the conviction has survived the appeal. Until then, finality has not occurred and the defendant's day in court is not yet over. The principle that emerges is that until the judicial

process is concluded by way of appeal, the Judgment in the lower court is suspended and it will not become final until the appeal is affirmed, [City of Pineville v. Collett](#), 294 Ky. 853, 172 S.W.2d 640 (1943). See also OAG 76-232, a copy of which is enclosed.

With regard to your second inquiry, under federal law, 18 USC § 1 states that any offense punishable by imprisonment for a term exceeding one year is a felony. 26 USC § 7203 reads:

Any person required under this title ... to make a return ... who willfully fails to ... make such a return ... shall ... be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both... .

*2 Thus, conviction of this federal offense is a misdemeanor and assuming that Mr. Snyder's Judgment is upheld and affirmed at the appellate levels, Kentucky would recognize these crimes as misdemeanors, determined as such by federal substantive law.

The real issue is whether this federal offense is a misdemeanor involving moral turpitude under Kentucky law. We turn to a discussion found in Annot., 63 ALR 3d 498 (1975) which catalogues those cases wherein an attorney was convicted for failure to file a federal income tax return. Some states hold that an attorney's willful failure to file an income tax return is, per se, a crime involving moral turpitude. [Matter of Pohlman](#), N.D. 248 N.W.2d 833 (1977); [In re Bass](#), Ill., 274 N.E.2d 6 (1971); [In re Kueter](#), Mo., 501 S.W.2d 486 (1973); [In re Kline](#), Mont. 477 P.2d 881 (1970); [State Board of Law Examiners v. Holland](#), Wyoming, 494 P.2d 196 (1972), as examples. However, a majority of the state courts have held that moral turpitude is not necessarily involved; for example, [In re Fahey](#), California. 505 P.2d 1369 (1973). Under Kentucky law, a conviction for failing to file a federal income tax return does not involve moral turpitude. [Kentucky State Bar Association v. McAfee](#), Ky., 301 S.W.2d 899 (1957); [Kentucky State Bar Association v. Brown](#), Ky., 302 S.W.2d 834 (1957); [Kentucky State Bar Association v. Ball](#), Ky., 501 S.W.2d 253 (1971); [Kentucky State Bar Association v. Vincent](#), Ky., 537 S.W.2d 171, 172 (1976). Thus, Mr. Snyder's two misdemeanor offenses cannot be used for revocation purposes pursuant to KRS 329.070(3).

In an attempt to better clarify the elusive, unwieldy legal phrase "moral turpitude," we note that it is defined at 21 Am.Jur.2d Crim. Law § 24 (1965):

...an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow-men, or to society in general Moral turpitude implies something which is immoral in itself, without reference to any legal prohibition.... It is the inherent nature of the offense which is determinative, not the name given it by statute, nor the legislature's decision to call it a felony or a misdemeanor....

It is said that crimes fall into three classifications in this connection: (1) those, such as frauds, which necessarily involve moral turpitude; (2) those, such as overtime parking, so obviously petty that conviction carries no suggestion of moral turpitude; and (3) those which may be saturated with moral turpitude, yet do not involve it necessarily, since it is not a necessary element for conviction.

Conviction of some crime establishes moral turpitude on its face. This includes crime that necessarily involves an intent to defraud or intentional dishonesty for the purpose of personal gain. For example: embezzling money, [In re Shumate](#), Ky., 382 S.W.2d 405 (1964); forgery, [In re Rothrock](#), Ky., 406 S.W.2d 840 (1966); grand larceny, [Kentucky State Bar Association v. Scott](#), Ky., 409 S.W. 2d 293 (1966); buying, receiving, and possessing stolen goods, [In re Carroll](#), Ky., 406 S.W.2d 845 (1966); receiving profits from use of public funds and accepting a bribe, [Kentucky State Bar Association v. Howard](#), Ky., 437 S.W.2d 171 (1969).

*3 Thus the phrase "misdemeanor involving moral turpitude" means something immoral in itself, irrespective of the fact that it is punished by the law. As was stated in [Jordan v. de George](#), 341 US 223, 232 (1951):

...Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude....

Thus we are able to conclude that at the very least, those misdemeanors involving fraud and dishonesty can be equated to "misdemeanors involving moral turpitude."

Sincerely yours,
Robert F. Stephens
Attorney General

By: Miles H. Franklin
Assistant Attorney General

Ky. OAG 78-408, 1978 WL 26449 (Ky.A.G.)

END OF DOCUMENT